

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Economic & International Development Department

AGENDA DATE: December 1, 2015

CONTACT PERSON NAME AND PHONE NUMBER: Memo Sotomayor (Real Estate Manager) 915-212-1572

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL: Goal 1 - Create an Environment Conducive to Strong Sustainable Economic Development

SUBJECT:

That the City Manager be authorized to sign the Retail Lease Agreement (the "Lease") by and between the City of El Paso ("Landlord") and Express My Coffee, LLC ("Tenant"), for the premises located at 218 North Campbell Street, Suite 103, El Paso, Texas, and any other documents related to said Lease, including but not limited to Landlord's Subordination Agreement.

BACKGROUND / DISCUSSION:

The City constructed two retail spaces at the Mulligan Building, also known as City 2, at 218 N. Campbell. There were multiple goals for these retail spaces. One goal was to create walkable streets with active retail storefronts. Another was to create a non-tax revenue stream to the City and to achieve the highest and best use of the property. Express My Coffee, LLC proposes to provide a start-up coffee shop business inside of the smaller of the two retail spaces in the Mulligan Building. The proposed lease space is approximately 1,560 square feet. The rental rate is \$13 per square foot or \$20,280.00 per year. The initial term of the Lease is five years with two five-year renewal options. The rental rate is set as a flat rate during the initial term and there are periodic rental increases throughout the renewal terms. The Tenant will install and be responsible for all the tenant improvements required to establish the business.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? No.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

This item is a revenue producing project.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign the Retail Lease Agreement (the "Lease") by and between the City of El Paso ("Landlord") and Express My Coffee, LLC ("Tenant"), for the premises located at 218 North Campbell Street, Suite 103, El Paso, Texas, and any other documents related to said Lease, including but not limited to Landlord's Subordination Agreement.

ADOPTED THIS ____ DAY OF _____ 2015.

THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary S. Westin
Managing Director, Economic &
International Development

RETAIL LEASE AGREEMENT

By and between
CITY OF EL PASO
AS LANDLORD

And

EXPRESS MY COFFEE, LLC
AS TENANT

for Property located at
218 N. Campbell Street, Suite 103, El Paso, Texas

EFFECTIVE DATE

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EXHIBIT A –Floor Plan depicting the Premises and Common Areas

EXHIBIT B - Legal Description for the Property

RETAIL LEASE AGREEMENT

This Retail Lease Agreement is made this ____ day of _____, 2015 by and between the **City of El Paso** (hereinafter referred to as LANDLORD), and **Express My Coffee, LLC**, a Texas limited liability company (hereinafter referred to as TENANT) for the premises as more fully identified hereunder, which is located at 218 N. Campbell Street, Suite 103 in El Paso, Texas.

WHEREAS, the City of El Paso is the owner of that certain property described as Lots 11-14, Block 230, Campbell Addition, an addition to the City of El Paso, El Paso County, Texas, together with all rights, easements, privileges, and appurtenances thereto (the "Property") commonly known as 218 N. Campbell Street, El Paso, Texas 79901.

WHEREAS, LANDLORD has completed the rehabilitation of the Property, including first floor retail area(s) in compliance with all applicable laws;

WHEREAS, TENANT has indicated a willingness to lease, properly operate, keep and maintain a portion of the first floor retail area designated as Suite 103 to operate a quick service food and beverage coffee shop business; and

WHEREAS, the LANDLORD has negotiated the terms of this Retail Lease Agreement (hereinafter referred to as the "Lease") with TENANT for the lease of approximately 1,560 square feet of the commercial retail space in the Property (the "Premises"), as more particularly described and shown in **Exhibit "A"** for the operation of a quick service food and beverage coffee shop.

WITNESSETH THAT, in consideration of the rents, covenants, and agreements herein set forth, the parties enter into the following agreement:

1. EXHIBIT LIST.

The exhibits listed below and attached to this Lease Agreement are incorporated herein and made a part hereof for all purposes.

A. Exhibit "A" consists of the floor plan and depiction of the Premises leased hereunder to TENANT and the Common Areas.

B. Exhibit "B" consists of the legal description the Property.

2. LEASED PREMISES.

A. Leased Premises. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, LANDLORD does hereby demise and lease to TENANT and TENANT does hereby lease and takes from LANDLORD, the Premises as more fully described in **Exhibit "A."**

- B. Right to Construct Leasehold Improvements.** TENANT shall have the right and privilege to construct, maintain, and remove certain leasehold improvements upon the Premises subject to the terms, covenants, and conditions contained herein, including, but not limited to Section 9. Prior to the construction or any modifications to the Premises, the schematic and final plans and specifications for any improvements, additions, alterations or changes as well as a schedule for completion of Leasehold Improvements shall be submitted to the LANDLORD's Real Estate Manager, for review and approval by the City. No work shall commence until the City Manager or designee has given written approval of the final plans which shall be given within fifteen (15) business days from the date that the TENANT has provided all documents necessary for LANDLORD's review. "Business day" means any day, other than a Saturday or Sunday, on which national banks in El Paso, Texas are open for business.
- C. Restriction of Privileges, Uses and Rights.** Given the physical limitations of the Premises due to the inability to install exhaust ventilation to the exterior of the Premises, the rights and privileges granted TENANT hereunder are subject and expressly limited to the operation of a quick service food and beverage coffee shop, including breakfast, flatbreads, wraps, pastries, non-alcoholic drinks, sandwiches, soups, salads, fruit, prepackaged foods and related food and non-alcoholic beverage products and combination meals composed of the foregoing, as permitted by the Health Codes of the State of Texas and the City of El Paso. Any change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Leased Premises for anything other than the approved use shall constitute an event of default and may result in termination of the Lease.
- D. Conditions of Granting Lease.** The granting of this Lease and its acceptance by TENANT is conditioned upon the following covenants:
- 1) That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of LANDLORD.
 - 2) That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of LANDLORD now in force or hereafter prescribed or promulgated by charter authority or by law.

3. OBLIGATIONS OF LANDLORD.

- A. Quiet Enjoyment.** So long as TENANT is not in default of any terms of this Lease Agreement, TENANT shall have peaceful, quiet use and possession of the Premises

throughout the term hereof. Such use and possession of the Premises is subject to the terms of this Lease Agreement.

B. Utilities Payment and Allocation. LANDLORD agrees to pay the electric, and water utility charges on a monthly basis. TENANT hereby covenants and agrees to reimburse LANDLORD the apportioned cost of the utilities within 30 days of receipt of request for payment by LANDLORD as Additional Rent. Upon request, LANDLORD shall provide TENANT copies of actual bills for utilities.

LANDLORD shall review these utility bills on an annual basis, determine the portion of the utility charges used by TENANT at the Premises, and apportion said charges accordingly. Apportionment of the electric, natural gas and water bills shall be based on two and thirty hundredths percent (2.30%) of the total monthly charges for each such utility indicated on LANDLORD's monthly bill for the Property. Monthly charges shall include any and all charges imposed by the utility including but not limited to fuel surcharges, customer charges, energy charges and similar type charges. During the Term of this Lease, the TENANT may request the installation of separate meters for utilities to the Premises, at TENANT's cost, subject to the provisions of Section 9 of this Lease. The LANDLORD will review such request and, if feasible, approve such separate metering within 15 business days of TENANT's request.

4. OBLIGATIONS OF TENANT.

A. Contingent Obligation. TENANT'S obligations under the Lease are contingent on TENANT's ability to get the necessary approvals, permits and licenses from appropriate governmental authorities to use the Premises for its intended use under this Lease and confirm the availability of a financing commitment for the project.

In the event that TENANT fails to obtain said building and other related governmental approvals or receive a permanent financing commitment within sixty (60) days from the Effective Date, TENANT may terminate the Lease upon ten (10) days written notice to the LANDLORD.

TENANT agrees that within fifteen (15) days from the Effective Date, it will provide to the LANDLORD a preliminary financing commitment from its lender.

B. Net Lease. This Lease shall be without cost to LANDLORD except for LANDLORD's obligations specifically set forth in Article 3 above and elsewhere in this Lease. TENANT shall:

- 1) Keep and maintain the Premises and any improvements located thereon in a good state of repair at all times;
- 2) TENANT agrees for the term of the Lease to pay any and all taxes assessed against the Premises, improvements located on the Premises,

TENANT's interest in the Premises and improvements, and all of TENANT's personal property located on the Premises; and

- 3) Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

- C. **Condition of Premises.** The parties acknowledge that the TENANT has the right to inspect the Premises prior to Possession Date of this Lease. As of the Possession Date (as defined in Section 5(A) of this Lease), TENANT agrees it will accept the Premises in their then-present condition and agrees that the Premises are suitable for TENANT's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. LANDLORD has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. LANDLORD shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

TENANT acknowledges and agrees that any improvements to the Premises installed by TENANT may not include any exhausts to the exterior of the Premises.

TENANT may install, at its cost, an undersink commercial grease trap such as a BK Resources Model WP-GT-7 grease trap, or equivalent model made by a competing vendor of similar size and capacity, provided that TENANT shall, as a part of its maintenance responsibilities, properly clean the grease trap at least monthly.

- D. **Waiver of Warranty of Suitability.** LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LANDLORD DOES NOT WARRANT THAT EITHER: (i) THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO TENANT'S USE OF THE PREMISES OR THE PROPERTY FOR THEIR INTENDED PURPOSE; OR (ii) THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN SUITABLE CONDITION. **AS OF THE POSSESSION DATE, TENANT ACCEPTS THE PREMISES "AS IS", WITH ALL FAULTS, RELYING ON TENANT'S OWN INSPECTION AND JUDGMENT AND NOT IN RELIANCE ON ANY REPRESENTATIONS OF LANDLORD. TENANT LEASES THE PREMISES "AS-IS", WHETHER SUITABLE OR NOT, AND WAIVES THE IMPLIED WARRANTY OF SUITABILITY.**

- E. **Quarterly Inspection.** At least once each calendar quarter during the term of this lease, LANDLORD shall have the right to conduct an inspection of the Premises with advance notice to TENANT, at a time calculated to not unduly disturb TENANT's operations and accompanied by TENANT's representative and improvements in order to insure they are being properly maintained. Upon

completion of the inspections, LANDLORD shall provide written notice of any repairs or maintenance which LANDLORD in its sole discretion determines must be made to the Premises and improvements. Failure to complete such repairs within thirty (30) calendar days, or if the repairs take more than 30 calendar days to commence and complete repair, failure to begin to arrange and repair within 30 days and diligently pursue to completion shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney's fees for the collection action.

- F. Compliance with Laws.** TENANT, at TENANT's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the terms, conditions and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the LANDLORD or TENANT, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

TENANT, at TENANT's expense, also specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

- G. Environmental Laws.** TENANT shall, at TENANT's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting TENANT's use, operation, occupation or alteration of the Premises including any improvements thereon.

1) Definitions.

(a) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the

regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

(b) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.

(c) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

(2) Compliance.

(a) With the exception of medically necessary medicines, treatments, and/or equipment related to the mental health treatment provided to patients who receive services on the Premises, TENANT shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by TENANT, its subtenants, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. TENANT shall indemnify, defend and hold harmless LANDLORD, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other related statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon caused or permitted by TENANT. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under environmental law. TENANT's obligations and liabilities under this paragraph shall continue so long as LANDLORD bears any liability or responsibility under the Environmental Laws for any action that occurred during the term of this Lease on the Premises or any improvements thereon. This indemnification of LANDLORD by TENANT includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present

in the soil or ground water on, under or about the Premises caused or permitted by TENANT. The parties agree that LANDLORD's right to enforce TENANT's promise to indemnify is not an adequate remedy at law for TENANT's violation of any provision of this Section. LANDLORD shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

(b) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon caused or permitted by TENANT results in any contamination of the Premises or any improvements thereon, TENANT shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that LANDLORD's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

(c) TENANT shall, at TENANT's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan are prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then TENANT shall, at TENANT's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to LANDLORD, TENANT shall promptly provide all information requested by LANDLORD to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

(d) TENANT shall immediately notify LANDLORD of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or TENANT's operation on the Premises, and (b) any change in TENANT's operation on the Premises that will change or has the potential to change TENANT's or LANDLORD's obligations or liabilities under the Environmental Laws.

(e) TENANT shall insert the provisions of this Section 4.G or shall cause or require to be caused in any lease agreement or contract by which it grants a right or privilege to any third party person, firm or corporation under this Lease that indemnifies the LANDLORD of any violation of

Environmental Law as set forth in this Section 4.G. TENANT acknowledges that failure to do so will not relieve the TENANT's obligation to indemnify LANDLORD for the actions or inactions of such third parties.

(f) Notwithstanding any contrary provisions in this Lease, in no event shall TENANT be required to indemnify LANDLORD or any other person or be responsible for any liability, loss, damage, expense, cost, penalty, legal or investigation fee or cost, cleanup cost or expense or remediation cost or expense arising from a violation of any Environmental Law or contamination resulting from the presence of Hazardous Material(s) on, under or about the Premises or in any improvements thereon not caused or permitted by the TENANT. The forgoing provisions shall survive termination of the Lease.

(g) Notwithstanding any contrary provisions of this Lease, LANDLORD acknowledges that as of the Possession Date, the Premises and any improvements thereon, shall not, to its knowledge be contaminated by any Hazardous Materials and shall not contain any Hazardous Materials.

H. Operating Covenants. TENANT further covenants and agrees that it will not: (i) permit any sound system to be played at a level so as to disrupt the peace or permit any objectionable advertising medium to be visible from the public streets; (ii) commit or permit waste or a nuisance upon the Premises or Property; (iii) permit or cause foul or offensive odors to be emanated or dispelled from the Premises, except the ordinary odors from food or beverage handling and preparation; (iv) sell or serve any alcoholic beverages or tobacco products; (v) solicit business in the Common Areas of the Property nor distribute advertising matter to, in or upon any such Common Areas except with the written authorization of LANDLORD; (vi) permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefor, nor permit any use of vehicles by TENANT, its employees or agents or vendors which will interfere with the use of the Common Areas of the Property; (vii) permit any noxious, toxic or corrosive fuel or gas, dust, dirt, or fly ash on the Premises; or (viii) place a load on any floor which exceeds the floor load per 125 pounds per square foot over corresponding floor beam for which such floor was designed to carry.

The TENANT shall, in the operation of the business allowed herein, employ or permit the employment of only such personnel as will assure a high standard of service to the public and shall be clean and properly attired for public sales. The management, maintenance and operation of TENANT's business and the Premises shall, at all times be under the direct supervision of the TENANT or an active, qualified, competent and experienced employee designated to represent TENANT.

LANDLORD reserves the right to, from time to time, promulgate reasonable rules of behavior for all tenants of the Property which in LANDLORD's opinion are necessary for the proper functioning of the Property, and TENANT agrees to follow same and to cause TENANT's employees and suppliers to follow same.

- I. **Utilities.** LANDLORD shall provide for, and shall make payment for, the following utility services to the Property and the Premises: electricity, and water. TENANT shall make, and pay for, all extensions of utility services from the existing locations in the Property to its desired locations within the Premises. TENANT shall be solely responsible for any other services needed or advisable for the Premises, such as without limitation telephone, cable, internet, and refuse and trash removal. TENANT agrees to pay before delinquency all fees, charges, and costs which may accrue to the Premises for all other services during the term of this Lease, whether Initial Term, or any Extension or Holdover period. LANDLORD shall in no event be liable to TENANT for any interruption in the service of any utilities to the Premises, without regard to the reason for such interruption; and this Lease Agreement shall continue in full force and effect despite any such interruptions; provided that LANDLORD shall make reasonably diligent efforts to restore, or have restored, any such interrupted utility services.
- J. **Trash, Garbage, and Other Refuse.** TENANT shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Due to physical constraints on space, TENANT shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted, nor shall the interference with any activities in the areas near the designated location due to the use by TENANT.
- K. **Fire Extinguishers.** TENANT agrees to supply and maintain at its own expense any fire extinguishers, or other fire prevention equipment required by any and all applicable federal, state, and local laws, rules, orders, ordinances, and regulations, and/or as may be required by any underwriters association, bureau, or any other similar body having jurisdiction over said Premises. LANDLORD will be responsible for maintaining the fire suppression and fire alarm systems. TENANT recognizes and agrees that it will be solely responsible for any modifications to the fire suppression system currently in the Property necessitated by the TENANT's occupancy or use of the Premises.
- L. **Hours of Operation.** The TENANT will operate and conduct its business in the Premises during business hours that are typical of the industry in which it operates. The cost of such business activities will be borne entirely by the TENANT, at no cost to the LANDLORD. LANDLORD acknowledges that TENANT may operate its business on weekends or other hours when the Property

is not otherwise open for business and agrees that the TENANT and its customers shall have access to the restrooms in the Common Area designated in **Exhibit "A"** to this Lease during TENANT's operating hours.

- M. Signage.** All signs on the Premises shall comply with all applicable local building codes and other ordinances.

The size, design and location of all signs shall be subject to approval by the LANDLORD in its sole discretion prior to approval of local governmental authorities as required by applicable law and installation. No outdoor advertising signs, billboards or flashing lighting shall be permitted. Signs shall be limited to those identifying the uses conducted on the Premises and those necessary for informational and directional purposes.

- N. Parking.** No employee or customer parking will be provided by LANDLORD.

- O. Loading Area.** Due to physical constraints on space, there is no designated area for the loading and unloading of delivery vehicles of TENANT.

5. TERM AND RENEWAL OPTION.

- A. Initial Term.** The Initial Term of this Lease shall be for a period of five (5) years, commencing on the Effective Date and ending on the date that is five years from the Rent Commencement Date, as further defined herein. The "Effective Date" is the date that the LANDLORD's governing body approves this Lease. The parties shall have vested rights immediately upon the Effective Date, and this Lease shall be binding and in full force and effect in accordance with its terms upon such execution; provided that the right of the TENANT to possession of the Premises shall commence on the Possession Date and its obligation to pay Rent hereunder shall commence on the Rent Commencement Date, as defined herein.

It is understood by the parties hereto that the TENANT will undertake to construct certain Leasehold Improvements (as defined in Section 8 herein) to the Premises, to make the Premises suitable for its specific purposes. The TENANT shall take possession of the Premises on the date that is no earlier than the date in which the TENANT obtains the permits necessary for the construction of the Leasehold Improvements. The LANDLORD shall provide a written Notice to Proceed with the construction of the Leasehold Improvements to the TENANT.

The "Possession Date" shall be the date of the LANDLORD'S Notice to Proceed to TENANT.

- B. Lease Year.** For purposes of determining the Additional Rent (as set forth in this Agreement, including but not limited to Section 6(C) and (D) herein), the term "Lease Year" as used in this Lease Agreement shall mean a period during the Initial Term or any extensions thereof commencing on January 1 of each year and

ending at midnight on December 31 of the same year, except that: (i) the first Lease Year shall begin on January 1 next following the Rent Commencement Date; and (ii) the last Lease Year shall terminate at midnight on the Expiration Date subject to any extensions thereto.

- C. **Option to Extend.** Provided that TENANT is not in default of this Lease and no uncured notice of default shall then exist under this Lease Agreement, TENANT shall have the right to extend the term of this Lease for two (2) renewal terms of five (5) years each (individually, the "Extended Term"), provided however that written notice is given to the LANDLORD of such intention to extend the lease at least ninety (90) days prior to the Expiration Date above stated or the expiration of the first Extended Term to exercise the right to extend for the second Extended Term; and further provided that all provisions of this Lease Agreement shall continue in full force and effect for the full period of any such extension. Minimum guaranteed rents, fees, and other charges for said additional term of years shall increase as set forth herein.
- D. **Holding Over.** If TENANT holds over or occupies the Premises beyond the Initial Term or any extensions thereto, TENANT shall pay additional rents, fees, and other charges required for each day of such holding over upon the terms set forth below. In such event, TENANT shall occupy the Premises on a tenancy from month to month and all other terms and provisions of this Lease Agreement shall be applicable to such period.
- E. **Public Necessity.** Should the public necessity require as determined by the LANDLORD, the LANDLORD may terminate this Agreement upon ninety (90) day written notice to the TENANT and this Lease Agreement shall expire with no additional costs or liabilities to either party. The LANDLORD and TENANT agree that to the extent the LANDLORD has available rental space that is amenable to both parties, the LANDLORD may negotiate with the TENANT to lease such space on terms and conditions as the parties may agree. To the extent that LANDLORD and TENANT are unable to reasonably reach agreement on replacement space, LANDLORD shall reimburse TENANT for TENANT's unamortized capital improvement costs, amortized over the Initial Term of this Lease. TENANT shall provide reasonable proof of TENANT's capital improvement costs.

6. RENT, FEES, AND OTHER CHARGES.

- A. **Base Annual and Monthly Rent.** TENANT shall pay to LANDLORD as base rent for the Premises during the Initial Term, the annual sum of TWENTY THOUSAND TWO HUNDRED EIGHTY AND NO/100 DOLLARS (\$20,280.00) (the "Annual Rent" or "Annual Rental Amount") payable in monthly installments of \$1,690.00. The Annual Rent shall remain the same for each year of the Initial Term and shall be payable in monthly rental amounts as set forth in the chart below. In the event that TENANT exercises its options to

extend the term of this Lease, the payments for the years in the Extended Terms are also set forth in the chart below.

<u>YEARS</u>	<u>ANNUAL PSF</u>	<u>ANNUAL RENT</u>	<u>MONTHLY RENT</u>
1-5	\$ 13.00	\$ 20,280.00	\$ 1,690.00
6-7	\$ 13.39	\$ 20,888.40	\$ 1,740.70
8-9	\$ 13.79	\$ 21,512.40	\$ 1,792.70
10-11	\$ 14.20	\$ 22,152.00	\$ 1,846.00
12-15	\$ 14.63	\$ 22,822.80	\$ 1,901.90

Said Monthly Rent shall be paid in advance of each month of the Initial Term, with proration to occur for the partial first and last months, if the Effective Date is other than on the first day of the calendar month. All Monthly Rent payments by the TENANT during the Initial Term shall be paid without deduction, offset, prior notice or demand, no later than the first (1st) day of each and every month during the Initial Term.

During the period in which the TENANT constructs Leasehold Improvements (as further defined in Section 8 herein), no Monthly Rent (\$0.00) shall be due for the Construction Period (the "Construction Period Rent") for a period not to exceed ninety (90) days. The Construction Period Rent shall automatically cease when the City's Building Permits and Inspections issues a certificate of occupancy or at the end of the permitted Construction Period, whichever comes first, which shall be deemed the Rent Commencement Date. The Monthly Rent payment for the first month in which the Rent Commencement Date is established shall be prorated proportionate to the number of days that the base Monthly Rent and the Construction Period Rent is due and payable.

- B. Rent for Extended Term(s).** TENANT shall pay to LANDLORD as base Annual Rent and Monthly Rent for the Premises during each Extended Term in the amounts set forth in the chart immediately above.

Said Monthly Rent shall be paid in advance of each month of the applicable Extended Term, with proration to occur for the partial first and last months, if the commencement of such extension is other than on the first day of the calendar month. All Monthly Rent by the TENANT during the applicable Extended Term shall be paid without deduction, offset, prior notice or demand, no later than the first (1st) day of each and every month during the Extended Term.

- C. Additional Rent.** TENANT shall pay as Additional Rent "Tenant's Share" of the expenses of operating and maintaining the Common Area, real estate taxes if applicable, Operating Expenses, and insurance premiums, as defined in Section 6(D) of this Lease as the "Tenant's Share," determined by the following method:

As soon as practical after the beginning of each calendar year during the term hereof, LANDLORD shall furnish TENANT a written statement estimating

Tenant's Share of: (i) Common Area expenses; (ii) the total taxes for said calendar year; (iii) total insurance premiums due for the year (herein collectively the "Additional Rent Estimate"). Beginning with the first month following receipt of said statement, TENANT shall pay LANDLORD monthly, as additional rent, one-twelfth (1/12) of the Additional Rent Estimate. In addition, TENANT shall pay with the rental payment for the first month following receipt of the Additional Rent Estimate an amount equal to the number of months elapsed in the calendar year prior to receipt of the Additional Rent Estimate statement times one-twelfth (1/12) of the Additional Rent Estimate, so as to bring said monthly payments current for the year. As soon as practical, but no later than 45 business days after the end of each calendar year during the term hereof, LANDLORD shall furnish TENANT a written statement showing Tenant's Share of the total Common Area expenses, taxes and insurance premiums actually due for the calendar year ended (the "Actual Expenses"). If the Actual Expenses exceed the Additional Rent Estimate, then TENANT agrees to pay within ten (10) days of receipt of said statement, as additional rent, the difference between Tenant's Share of the Actual Expenses and the Additional Rent Estimate. If the Additional Rent Estimate exceeds the Actual Expenses, then LANDLORD agrees to refund, or if the parties agree, to give TENANT rental credit for Additional Rent due, the difference at the time that such statement is furnished provided TENANT is not then in default on any of its obligations under this Lease. The provisions of this paragraph shall apply for any partial calendar year during which this Lease is effective, subject to a pro rata adjustment based upon the number of calendar months or portions thereof that this Lease is in effect and rent commencement has been effective. Upon reasonable notice to LANDLORD, TENANT shall have the right to review all bills, charges and receipts relating to such expenses and Additional Rent at LANDLORD's business office during regular business hours. Such additional expenses, and therefore the portion TENANT shall be responsible to pay, will vary from year to year and will be re-calculated every year.

For the first prorated portion of the calendar year during which the Rent Commencement Date occurs, the Additional Rent Estimate and thus the amount which would have otherwise been charged annually is estimated to be \$2.75/s.f. or \$357.50 monthly, with the first prorated monthly payment due on the Rent Commencement Date.

- D. Tenant's Share.** "Tenant's Share" is two and three tenths percent (2.30%). This is determined by the fraction, the numerator of which is the square footage of the Premises as identified on the floor plan on Exhibit "A" and the denominator of which is the total number of square feet of space in the building.

Notwithstanding the foregoing, for the first two years, "Tenant's Share" shall be the following: \$100 per month from the time TENANT takes possession of the Premises until TENANT obtains a Certificate of Occupancy (but not more than 90 days) and 80% of the Tenant's Share per month for the remainder of the first year of this Lease; 90% of the Tenant's Share per month for the second year of this

Lease; and starting at the beginning of the third year of this Lease, 100% of the Tenant's Share as calculated above.

- E. **Hold Over Rent.** If TENANT holds over or occupies the Premises beyond the Initial Term or any extensions thereto, TENANT shall pay a sum equal to one and one-half (1½) times the base Monthly Rent applicable for the Initial Term or the applicable Extended Term prorated for the number of days of such holding over. In addition, TENANT shall also pay all other additional fees and charges required during the Initial Term and any extended periods, including Operating Expenses as Additional Rent as enumerated herein.
- F. **Unpaid Rent, Fees, and Other Charges.** Any installment of Rent, fees, or other charges accruing under any provision of this Lease Agreement that are not received by LANDLORD by the tenth (10th) day of the month in which payment is due, shall bear interest at the highest maximum rate permitted by law.
- G. **Place of Payment.** All Rent, fees, and other charges required of TENANT herein shall be paid to LANDLORD at the following address, or at such place as may be designated from time to time by LANDLORD:

City of El Paso
Office of the Comptroller
300 N. Campbell
El Paso, Texas 79901

7. COMMON AREAS AND OPERATING EXPENSES.

A. **Common Areas in General.**

- (1) All Common Areas as identified within **Exhibit "A"** and other areas and improvements provided by LANDLORD for the general use in common of LANDLORD, TENANT, and any other tenant(s) of LANDLORD and their customers (hereinafter referred to collectively as "Common Areas") shall at all times be subject to the exclusive control and management of LANDLORD. LANDLORD shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to all Common Areas.
- (2) LANDLORD shall have the right to: (i) change the sizes, locations, shapes and arrangements of the common areas; and (ii) design and complete such other acts in and to said common areas as LANDLORD in its sole discretion deems advisable, provided such change or design or other act does not materially interfere with TENANT'S use of the Premises or unreasonably interfere with the TENANT'S use of the Common Area by TENANT, its business invitees, employees or customers.

B. Use of Common Areas. TENANT and its business invitees, employees, and customers shall have the nonexclusive right of access to the Common Areas in common with LANDLORD. TENANT shall abide by all rules and regulations and cause its concessionaires, officers, employees, agents, customers, and invitees to abide thereby. LANDLORD may at any time temporarily close any Common Area to make repairs or changes, prevent the acquisition of public rights therein, or for any other reasonable purposes and LANDLORD may take reasonable temporary steps to avoid interference with the TENANT'S use of the Premises and permit the use thereof by TENANT, its business invitees, employees or customers. TENANT shall not interfere with LANDLORD's, or other TENANT's rights to use any part of the Common Areas.

C. Cost of Operating and Maintaining the Common Area. TENANT shall pay as Additional Rent, in accordance with paragraphs 6C and 6D, Tenant's Share of the expenses incurred by LANDLORD in operating and maintaining the Common Area. Such expenses shall include, but not be limited to, the cost of labor, materials, property supplies, repairs, security, gardening, landscaping, line painting, exterior building painting, lighting, insurance, utility costs not otherwise assumed by TENANT or any other tenant(s) or occupant for the Common Area, including, but not limited to sanitary control, pest control, garbage removal service for all tenants, and the removal of trash, rubbish, garbage, snow, or other impediments and any insurance deductibles that LANDLORD pays under insurance policies covering the Property (collectively, "Common Area Maintenance Expense").

8. MAINTENANCE OF THE PREMISES.

A. Maintenance by LANDLORD. LANDLORD shall keep or cause to be kept the foundation, roof, and structural portions of walls, HVAC, plumbing and fire suppression and alarm systems of or for the Premises in good order, repair, and condition except for damage due to the acts or omissions of TENANT, its employees, or invitees. LANDLORD shall commence required repairs as soon as reasonably practicable after receiving written notice from TENANT of any required repair. Except as provided in this Section, LANDLORD shall not be obligated to make repairs, replacements, or improvements of any kind upon the Premises, or to any equipment, merchandise, stock in trade, facilities, or fixtures therein, all of which shall be TENANT's responsibility.

B. Maintenance by TENANT. TENANT shall at all times keep the Premises (including all entrances and vestibules) and all partitions, window and window frames and moldings, glass doors, door openers, fixtures, equipment and appurtenances thereof and any Leasehold Improvements it makes and all other parts of the Premises not required herein to be maintained by LANDLORD in good order, condition and repair and clean, orderly, sanitary and safe, reasonable wear and tear and damage by unavoidable casualty excepted. Such maintenance responsibilities shall include but not limited to those activities necessary to cause the Premises to comply with applicable laws, ordinances, rules, regulations and

orders of governmental and public bodies and agencies. If replacement of equipment, fixtures and appurtenances thereto are necessary and upon prior review and approval of LANDLORD, TENANT shall replace the same with equipment, fixtures and appurtenances of the same quality, and repair all damages done in or by such replacement.

LANDLORD shall be the sole judge of the quality of maintenance and, upon written notice by LANDLORD to TENANT, TENANT shall be required to perform whatever reasonable maintenance LANDLORD deems necessary. If said maintenance is not undertaken by TENANT or commenced within ten (10) days after receipt of written notice, LANDLORD shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by TENANT. If TENANT fails to perform work resulting from TENANT's acts, actions or omissions LANDLORD may perform such maintenance and add the cost of the same to the next installment of Rent due hereunder as Additional Rent.

- C. **Condition at Surrender of Premises.** At the expiration or termination of this Lease Agreement, TENANT shall surrender the Premises in the same condition as they were in on the Effective Date, reasonable wear and tear excepted, and deliver all keys for, and all combinations on locks, safes, and vaults in, the Premises to LANDLORD, provided however, that TENANT shall have the right to remove safes and vaults that TENANT has installed as trade fixtures and shall repair the Premises to the condition prior to such installation.
- D. **Repairs to Property.** From time to time during the lease term, LANDLORD may find it necessary to make repairs to the improvements located on the Property. Every effort will be made to not interfere with TENANT's use and enjoyment of the site but TENANT understands and agrees that the use of the Property will sometimes require the cooperation of TENANT and reasonable temporary adjustments to TENANT's operations.

9. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.

- A. **Property Improvements.** The TENANT acknowledges that the LANDLORD has completed the rehabilitation of the Property in 2014, including the Premises, prior to the Effective Date of this Lease in accordance with the LANDLORD'S plans and specifications. The LANDLORD has made such plans and specs available to TENANT for its review and inspection. The parties agree that the interior condition of the Premises requires certain build out of the shell space and shall be constructed by TENANT as part of the Leasehold Improvements, at TENANT's sole cost.
- B. **Leasehold Improvements.** Pursuant to the provisions in this Lease, the TENANT shall obtain the LANDLORD's approval prior to the construction of any Leasehold Improvements which LANDLORD will provide within fifteen (15)

business days from the date that the TENANT has provided all documents necessary for the LANDLORD's review. Within 30 calendar days of the Effective Date of the Lease, or at least 60 calendar days prior to the date of any subsequent improvements proposed by TENANT, the TENANT shall submit to the LANDLORD the TENANT's plans, specifications and working drawings for TENANT's construction or alterations of any improvements to the Premises (the "Leasehold Improvements"), a complete list of subcontractors, and a schedule for completion of such Leasehold Improvements for review and approval. TENANT acknowledges that building-wide systems (e.g., HVAC and fire suppression systems) for the Property and the Premises are currently under warranty and TENANT's subcontractors must be experienced with, and approved by, LANDLORD's systems providers so that any risk of breach of warranty for the systems shall be diminished. Such Leasehold Improvements shall include, but not be limited to building out the shell space, the installation of any signs, awnings or fixtures on the Premises or Property. During construction, the construction of the Leasehold Improvements shall not interfere with access to the Property. TENANT shall have no right whatsoever to make any alterations or improvements to the interior or exterior structural walls or the structural components of the Premises or any portion of the Common Area or the Property outside the Premises except as expressly approved. Any Leasehold Improvements permitted to be installed by TENANT shall incorporate new fixtures and materials.

No work shall commence until the City Manager or designee has given written approval within fifteen (15) business days from the date that the TENANT has provided all documents necessary for the LANDLORD's review. It is specifically understood that the Real Estate Division is only one of numerous departments of the LANDLORD and that, in addition to obtaining the recommendation of the Real Estate Manager and approval of the City Manager or designee, TENANT may be required to obtain the approval of other departments as well, such as Capital Improvements Department (Engineering), Planning and Inspections, Streets and Maintenance Department (including, but not limited, to facilities management division) or similar departments as applicable.

C. **Payment and Performance Bonds.** The TENANT shall select a Contractor to complete the construction of the Leasehold Improvements. The TENANT shall cause its contractor, at its own cost and expense, to make, execute, and deliver to LANDLORD payment and performance bonds for the construction of the Leasehold Improvements in an amount equal to the contract price, as follows:

1. Prior to the date of commencement of any construction in an amount established by applicable law at the time of construction, a performance bond in a sum equal to the full amount of cost of construction, which shall comply in all respects with Chapter 2253 of the Texas Government Code.
2. Prior to the date of commencement of any construction in an amount established by applicable law at the time of construction, a payment bond

with Tenant's contractor or contractors as principal, in a sum equal to the full amount of construction, which shall comply in all respects with Chapter 2253 of the Texas Government Code.

The bonds shall be issued by a surety satisfactory to LANDLORD in a form and substance satisfactory to LANDLORD and name the City of El Paso as an obligee.

- D. Compliance with Applicable Law.** In the event TENANT receives approval for any proposed Leasehold Improvements, any and all such Leasehold Improvements shall comply with all applicable laws, codes, and regulations, including but not limited to the El Paso City Code regulations.

TENANT acknowledges that LANDLORD has completed the rehabilitation of the Property in 2014, including the Premises, in compliance with all laws, including, but not limited to the Americans with Disabilities Act, prior to the Effective Date of this Lease in accordance with the LANDLORD'S plans and specifications. The LANDLORD has made such plans and specs available to TENANT for its review and inspection.

- E. Improvements Upon Termination or Expiration.** All improvements, including Leasehold Improvements made by TENANT shall remain TENANT'S property for the Lease Term. Upon expiration or termination of this Lease Agreement, all improvements, including any Leasehold Improvements, shall immediately become LANDLORD'S property, be considered part of the Premises, and shall not be removed without LANDLORD'S prior written consent unless LANDLORD, in writing, requests TENANT to remove same. TENANT may remove furniture, fixtures and equipment at the expiration or termination of the Lease, provided however that if TENANT removes any shelving, decoration, equipment, fixtures or trade fixtures, or personal property of any type that are affixed or attached to the Premises or which removal results in any damage to the Premises or Property, TENANT shall repair or pay for the repair of any damage done to the Premises resulting from removing the same within thirty (30) days of invoice.

- F. Discharge of All Liens.** Where applicable, TENANT shall promptly pay all contractors and materialmen, and not permit or suffer any lien to attach to the Premises, the Property, or any part thereof. TENANT SHALL AND DOES HEREBY INDEMNIFY AND SAVE HARMLESS LANDLORD AGAINST THE SAME. LANDLORD shall have the right to require TENANT to furnish a bond or other indemnity satisfactory to LANDLORD prior to the commencement of any work by TENANT or its contractors or subcontractors on the Premises or Property. TENANT shall be fully responsible for the full discharge of any and all contractor, materialmen, or other lien claimed in connection with TENANT'S construction of any Leasehold Improvements pursuant to this Section 9.

10. TAXES AND GOVERNMENTAL CHARGES.

- A. TENANT shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the TENANT or the LANDLORD, with respect to the Premises, TENANT's leasehold interest or any improvements thereon, during the Term of this Lease Agreement, including any extensions or option periods.
- B. The TENANT in good faith may contest any tax or governmental charge; provided that the TENANT may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the LANDLORD, such action will not adversely affect any right or interest of the LANDLORD.

11. INSURANCE AND INDEMNIFICATION.

- A. **Fire and Other Risks Insurance.** TENANT, at its sole cost and expense, shall throughout the Initial Term of this Lease Agreement and any extensions thereto, keep or cause to be kept all improvements now or hereafter located upon the Premises, including, but not limited to the Leasehold Improvements, insured for the mutual benefit of LANDLORD and TENANT against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, acts of war, riots, vandalism, and malicious mischief, in an amount equal to the actual replacement cost of such improvements. LANDLORD shall be liable for any loss by any casualty, fire, or theft. TENANT is solely responsible for carrying adequate insurance at its sole cost and expense to cover TENANT for any such losses.
- B. **Liability Insurance.** TENANT, at its sole cost and expense shall, throughout the Initial Term of this Lease Agreement and any extensions thereto, provide and keep in force for the benefit of TENANT, with LANDLORD as additional insured, comprehensive general liability insurance in an amount not less than:

- \$1,000,000 - Per Occurrence
- \$1,000,000 – General Aggregate
- \$1,000,000 – Products/Completed Operations – Occurrence & Aggregate

The following endorsements shall be added to the policy:

- (1) A Waiver of Subrogation in favor of the City of El Paso; and
- (2) A thirty (30) day Notice of Cancellation/Material Change in favor of the City of El Paso.

Workers Compensation. TENANT, at its sole cost and expense shall, throughout the Initial Term of this Lease Agreement and any extensions thereto, shall obtain and maintain Workers' Compensation and Employers Liability coverage with

limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act. The following endorsements shall be added to the policy:

1. A Waiver of Subrogation in favor of the CITY; and
2. A thirty (30) day Notice of Cancellation/Material Change in favor of the CITY.

C. **Authorized Insurance Companies.** All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by LANDLORD, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to LANDLORD at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

- (1) A statement of the coverage provided by the policy;
- (2) A statement certifying the LANDLORD to be listed as an additional insured in the policy;
- (3) A statement of the period during which the policy is in effect;
- (4) A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- (5) An agreement by the insurance company issuing such policy that the policy shall not be materially altered, canceled, or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to LANDLORD.

D. **Indemnification.** TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES OR THE PROPERTY, ITS USE OF THE PREMISES OR THE PROPERTY, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS LEASE AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, INVITEES, OR LICENSEES IN OR ABOUT THE PREMISES OR THE PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LANDLORD. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON

NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LANDLORD.

12. **RIGHT OF ENTRY.** LANDLORD or its agents and employees shall have the right to enter the Premises from time to time at reasonable times to examine and make such inspections, repairs, alterations, improvements, or additions as LANDLORD deems desirable. Rent shall in no way abate while any such repairs, alterations, improvements, or additions are being made. During the last six (6) months of the Initial Term or any extensions thereto, LANDLORD, or their agents and employees may exhibit the Premises to prospective TENANTS and maintain upon the Premises notices deemed advisable by LANDLORD. In addition, during any apparent emergency, LANDLORD or its agents and employees may enter the Premises forcibly without liability therefore and without in any manner affecting TENANT's obligations under this Lease Agreement. Nothing herein contained, however, shall be deemed to impose upon LANDLORD any obligation, responsibility, or liability whatsoever, for any care, maintenance, or repair except as otherwise herein expressly provided.

13. **DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY.**

A. **Obligations of TENANT.** During the term hereof, except as provided herein, should the Premises be damaged or destroyed in whole or in part by fire or other casualty, TENANT shall give prompt notice thereof to LANDLORD, and LANDLORD shall repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time at LANDLORD's cost except where such damage is caused by the intentional or negligent acts or omissions of TENANT or any of its agents, servants, employees or independent contractors, in which case the TENANT shall be liable and responsible for any repair and restoration. Such repairs, replacements or rebuilding shall be made by LANDLORD as aforesaid and LANDLORD shall bill TENANT for the repairs, replacements or rebuilding.

In the event that the building in which the Premises is located is completely destroyed or so damaged that it will or does remain untenable for more than ninety (90) consecutive days, LANDLORD shall be under no obligation or repair and reconstruct such building and rent payable hereunder with regard to TENANT's space in said Premises shall be proportionately paid up to the time of such damage or destruction and shall henceforth cease until such time as the Premises may be fully restored. If within six (6) months after the time of such damage or destruction said building shall not have been repaired or reconstructed for TENANT's use or other reasonable facilities provided in lieu thereof, TENANT shall have the right, by written notice to LANDLORD, to cancel this Lease as of the date of such damage or destruction.

B. **Insurance Proceeds.** Upon receipt by TENANT of the proceeds of the insurance policy or policies, TENANT shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by TENANT during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding

of such damaged improvements, TENANT shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by TENANT.

C. **Cancellation of Lease.** Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Lease, LANDLORD shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving TENANT written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by LANDLORD, unless LANDLORD has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.06 herein below, in which case TENANT shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by LANDLORD will relieve TENANT from any responsibility to restore the Premises to their former condition.

14. EMINENT DOMAIN/CONDEMNATION

A. **Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- (1) "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- (2) "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- (3) "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (a) The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by TENANT;
 - (b) The conduct of TENANT's business on the Premises would be substantially prevented or impaired;
 - (c) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available

for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of TENANT under this Lease.

- (4) "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- (5) "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- (6) "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.
- (7) "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- (8) "Date of Taking" means the date that TENANT is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

B. Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- (1) Notice of intended Taking;
- (2) Service of any legal process relating to condemnation of the Premises or improvements; or
- (3) Notice in connection with any proceedings or negotiations with respect to such a condemnation.

C. Rights of Parties During Condemnation Proceeding. LANDLORD and TENANT shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver

to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

D. Taking of Leasehold. Upon a Total Taking, TENANT's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but TENANT's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, TENANT may, by notice to LANDLORD within ninety (90) days after TENANT receives Notice of the intended Taking, elect to treat the Taking as a Total Taking. If TENANT does not so notify LANDLORD, the Taking shall be deemed a partial Taking. Upon a partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by TENANT shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

E. Total Taking. All of TENANT's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any TENANT-owned improvements and the leasehold estate shall be disbursed to TENANT. All sums awarded for the Premises, as unencumbered by any TENANT-owned improvements, but subject to the Lease, shall be disbursed to LANDLORD.

F. Partial Taking. Upon a Partial Taking, all Awards shall be disbursed as follows:

- (1) To the cost of restoring the improvements on the Premises; and
- (2) The balance, if any, to LANDLORD and TENANT as follows: TENANT shall receive all sums awarded for TENANT-owned improvements and the Leasehold estate. LANDLORD shall receive all sums awarded for the Premises, as unencumbered by the TENANT-owned improvements but subject to the Lease.

G. Obligations of TENANT Under Partial Taking. Promptly after any such Partial Taking, TENANT, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for TENANT's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last year of the initial term or any renewal term, TENANT shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying LANDLORD of its intention to that effect; provided however, that all sums awarded for TENANT owned improvements and the Leasehold estate shall be disbursed to LANDLORD.

H. Taking of Temporary Use of Premises and Improvements. Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and TENANT

shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for TENANT's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, TENANT shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, TENANT shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for total, substantial and Partial Takings.

15. ENCUMBRANCES.

- A. TENANT may not encumber its leasehold estate and its interest in the improvements constructed and to be constructed in the Premises.
- B. The LANDLORD acknowledges that TENANT may enter into a personal property lease agreement or financing for its business or equipment to be physically located at the Premises. If the lender or equipment LANDLORD requires a waiver or subordination agreement from LANDLORD as acknowledgement, LANDLORD agrees that it will reasonably cooperate with TENANT to provide such subordination agreements.

16. ASSIGNMENT AND SUBLETTING.

- A. **Consent to Assignment Required.** TENANT shall not assign this Lease Agreement or any interest therein, whether voluntarily, by operation of law, or otherwise and shall not sublet the Premises or any part thereof, except upon receipt of prior written permission and consent of LANDLORD. TENANT acknowledges that the consent to assignment is a discretionary action of the City Council of the City of El Paso. Consent of LANDLORD to any such assignment or subletting shall not be permitted if: (i) at the time of such assignment or subletting, TENANT is in default in the performance and observance of any of the covenants and conditions of this Lease Agreement; (ii) the assignee, subtenant, or TENANT will not expressly assume in writing all of TENANT's obligations hereunder; and (iii) TENANT's provision of proof to LANDLORD that the assignee's or subtenant's financial condition is not satisfactory to LANDLORD. Any assignment made without LANDLORD's consent shall be void.
- B. Any such assignment or subleasing, even with the approval of LANDLORD shall not relieve TENANT from liability for payment of all forms of rental, fees, and other charges herein provided or from the obligations to keep and be bound by the Initial Term, conditions, and covenants of this Lease Agreement. LANDLORD's acceptance of rent, fees, or other charges from any person or entity other than

TENANT shall not be deemed to be a waiver of any of the provisions of this Lease Agreement, or a consent in the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed a consent to any further assignment or subletting. Any merger, consolidation, or transfer of corporate shares of TENANT, if TENANT is a corporation, so as to result in a change in the present voting control of TENANT by the person or persons owning a majority of said corporate shares on the date of this Lease Agreement, shall constitute an assignment and be subject to the conditions of this Section.

17. LANDLORD'S PERFORMANCE FOR ACCOUNT OF TENANT.

Following a notice of default, if TENANT shall continue in default in the performance of any of the covenants or agreements herein contained, LANDLORD may perform the same for the account of TENANT. Any amount paid or expense or liability incurred by LANDLORD in the performance of any such matter for the account of TENANT shall be deemed to be Additional Rent and the same (together with interest thereon at the maximum rate permitted by law from the date upon which any such expense shall have been incurred) may, at the option of LANDLORD, be added to any rent then due or thereafter falling due hereunder, provided that the LANDLORD shall comply with all applicable public procurement requirements and further provided that the TENANT has a right to dispute any unreasonable amounts incurred by notifying the LANDLORD in writing within 30 days of the date the bill is presented to TENANT and, in the event that the TENANT prevails, the LANDLORD credits the TENANT for the disputed amount of the Additional Rent.

18. DEFAULT BY TENANT.

A. **Events of Default.** The following shall be considered for all purposes to be events of default under and breaches of this Lease Agreement:

- (i) TENANT fails to pay rent, fees, other charges or other amounts when due hereunder and fails to cure such default for more than ten (10) days after receiving written notice of such failure;
- (ii) TENANT fails to perform or observe any other of the terms, provisions, conditions, and covenants of this Lease for more than ten (10) days after receiving written notice of such failure;
- (iii) LANDLORD determines that TENANT had submitted any false report required to be furnished hereunder;
- (iv) TENANT does anything upon or in connection with the Premises or the construction of any part thereof, which directly or indirectly interferes in any way with, or results in a work stoppage in connection with, the operation, construction management or other related activities of LANDLORD in, on, under, or above any part of the PROPERTY and TENANT fails to cease the acts causing such interference or work

- stoppage within the reasonable period which TENANT shall require in a written notice;
- (v) TENANT becomes bankrupt or insolvent or file or have filed against it a petition in bankruptcy or for the appointment of a receiver or trustee of all or a portion of TENANT's property, or TENANT makes an assignment for the benefit of creditors;
 - (vi) After TENANT begins normal business operations and is open to the public, TENANT abandons or vacates or does not do business in the Premises for ten (10) consecutive calendar days except as contemplated under the Lease, such as in the event of destruction or damage to the Premises by fire or other casualty; or
 - (vii) The Premises comes into the hands of any person other than TENANT, in a manner other than as expressly permitted under this Lease Agreement.

B. Default and Re-Entry. Should any such event of default occur as set forth in Section 18, and without any grace period, demand or notice, except as herein provided (the same being hereby waived by TENANT), LANDLORD, in addition to all other rights or remedies it may have, shall have the right thereupon or at any reasonable time thereafter to terminate this Lease Agreement by giving notice to TENANT stating the date upon which such termination shall be effective. LANDLORD shall further have the right, either before or after any such termination, to re-enter and take possession of the Premises, remove all persons and property from the Premises and store such property at TENANT's expense, all without notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby. Nothing herein shall be construed to require LANDLORD to give notice before exercising any of its rights and remedies provided for in this Lease Agreement.

C. Right to Relet. If LANDLORD re-enters as provided herein, or if LANDLORD takes possession pursuant to legal proceedings or otherwise, LANDLORD may either terminate this Lease Agreement or LANDLORD may, from time to time, without terminating this Lease Agreement, make such alterations and repairs as it deems advisable to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may extend beyond the Term or any extensions thereof) and at such rentals and upon such other terms and conditions as LANDLORD in its sole discretion deems advisable. Upon each such reletting all rentals, fees, or charges received by LANDLORD through reletting shall be applied: (i) to any indebtedness other than rent due hereunder from TENANT of LANDLORD; (ii) to pay any costs and expenses of reletting, including brokers and attorneys' fees and costs of alterations and repairs; (iii) to rent due hereunder; and (iv) the residue, if any, shall be held by LANDLORD and applied in payment of future rent as it becomes due hereunder.

D. Deficiency of Reletting Rentals. If rentals received from such reletting during any month are less than that to be paid during that month by TENANT hereunder, TENANT shall immediately pay any such deficiency to LANDLORD. No

re-entry or taking possession of the Premises by LANDLORD shall be construed as an election to terminate this Lease Agreement unless a written notice of such termination is given by LANDLORD.

- E. **Termination Damages.** LANDLORD may at any time after any reletting terminate this Lease Agreement for any prior breach or default. If LANDLORD terminates this Lease Agreement for any events of default or breach, in addition to any other remedies LANDLORD may have, LANDLORD may recover from TENANT all damages incurred by reason of such default or breach, including all costs of retaking the Premises and including the excess, if any, of the total rent, fees, and charges reserved in this Lease Agreement for the remainder of the Lease Term over the then reasonable rental value of the Premises for the remainder of the Term or any extensions thereof, all of which shall be immediately due and payable by TENANT.
- F. **Waiver of Rights of Redemption.** To the extent permitted by law, TENANT waives any and all rights of redemption granted by or under any present or future laws if TENANT is evicted or dispossessed for any cause, or if LANDLORD obtains possession of the Premises due to TENANT's default hereunder or otherwise.

19. TERMINATION BY TENANT.

- A. In the event that in any Lease Year the TENANT's total occupancy costs as a percentage of sales exceed twelve percent (12%) and TENANT shall provide reasonable financial evidence acceptable to the LANDLORD's Internal Auditor supporting such costs, TENANT may terminate this Lease upon sixty (60) days written notice to LANDLORD. In such event that TENANT terminates this Lease, the TENANT shall be responsible to the LANDLORD for the costs of reletting the Premises as set forth in Section 18(C) of this Lease.
- B. In the event the LANDLORD vacates, abandons or ceases to operate in fifty percent (50%) of the total space at the Property during the Initial Term or any Extended Term, the TENANT may, at its sole discretion, upon sixty (60) days' notice to LANDLORD, terminate this Lease and each party shall be relieved of any and all obligations hereunder, except as expressly stated otherwise in this Lease.

20. APPLICATION OF PAYMENTS RECEIVED FROM TENANT.

LANDLORD shall have the right to apply any payments made by TENANT to the satisfaction of any debt or obligation of TENANT according to LANDLORD's sole discretion and regardless of the instructions of TENANT as to application of any such sum, whether such instructions be endorsed upon TENANT's checks or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by LANDLORD of a check or checks drawn by others than TENANT shall in no way affect TENANT's liability hereunder nor shall it be deemed an approval of any assignment of this Lease Agreement by TENANT.

21. NOTICES.

All notices required to be given hereunder shall be in writing and shall be hand delivered or mailed by registered mail, postage prepaid, to the following locations, as may be amended from time to time by the parties in writing:

LANDLORD: City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: City Manager

copy to: City of El Paso
Economic & International Development Department
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: Real Estate Manager

TENANT: Express My Coffee, LLC
5321 Gulfport Drive
El Paso, Texas 79924
Attn: Christopher Baird

22. WAIVER.

No delay or omission in the exercise of any right or remedy of LANDLORD on any default by TENANT shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by LANDLORD of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver or timely payment for the particular rent payment involved. No act or conduct of LANDLORD including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by TENANT before the expiration of this Lease Agreement. Only notice from LANDLORD to TENANT shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease Agreement. LANDLORD's consent to or approval of any act by TENANT requiring LANDLORD's consent or approval shall not be deemed to waive or render unnecessary LANDLORD's consent to or approval of

any subsequent act by TENANT. Any waiver by LANDLORD of any default must be in writing.

23. SECURITY DEPOSIT.

TENANT shall pay, within 10 days of the Effective Date, the sum of first and last month's rent to be held as collateral security for the payment of any rentals and any other sums of money for which TENANT shall become liable to LANDLORD under this Lease, and for the faithful performance by TENANT of all other covenants and agreements made herein; said deposit is acknowledged as being the first and last month's Monthly Rental due under this Lease Agreement. TENANT shall receive credit towards the first month's Monthly Rental for one-half of the Security Deposit.

24. GENERAL PROVISIONS.

- A. **Successors and Assigns.** The covenants hereby contained shall, subject to the assignment and subletting provision herein, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties.
- B. **Invalidity of any Provision.** If any term, covenant, condition, or provision of this Lease Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- C. **Headings.** The headings of Articles and Sections in this Lease Agreement are designed to facilitate prompt reference to subject matter and shall be disregarded when resolving any dispute concerning the meaning or interpretation of any language contained in this Lease Agreement.
- D. **Interpretation.** As used in this Lease Agreement, whenever required by the context hereof, each number, both singular and plural, shall include all numbers, and each gender shall include all genders.
- E. **Applicable Laws and Venue.** The laws of the State of Texas shall govern the validity, interpretation, performance, and enforcement of this Lease Agreement. Venue shall be in the courts of El Paso, El Paso County, Texas.
- F. **Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provisions of this Lease Agreement.
- G. **Joint and Several Liability.** If TENANT is a partnership or other business organization the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.
- H. **Entire Agreement and Amendment.** There are no representations, covenants, warranties, promises, agreements, conditions, or undertakings, oral or written

between LANDLORD and TENANT other than as set forth herein. Except as provided herein, no subsequent alteration, amendment, charge, or addition to this Lease Agreement shall be binding upon LANDLORD or TENANT unless in writing and signed by both parties.

- I. **Legal Relationship.** Nothing in this Lease Agreement shall be construed or deemed to create any partnership or other relationship between the parties, other than as expressly provided for herein. Subject to the provisions of this Lease Agreement, TENANT shall be solely responsible for and shall wholly control the Premises referenced in this Agreement.

- J. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, acts of war or other reason of the like nature not the fault of the party delayed in performing work or doing acts required under this Lease Agreement, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, TENANT shall not be excused from any obligations for payment of rents, fees, or other payments required by the terms of the Lease Agreement when same are due, and all such amounts shall be paid when due.

- K. TENANT hereby consents to any individual or corporate credit checks, which may be required by LANDLORD or any financial institutions connected with the financing of LANDLORD as may relate to the leasing of the Property or any portion thereof.

- L. **Authorization to Enter Agreement.** Each of the persons executing this Lease Agreement on behalf of TENANT warrants to LANDLORD he/she is authorized to do so. Upon LANDLORD's request, TENANT will provide evidence satisfactory to LANDLORD confirming these representations.


(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, LANDLORD and TENANT have signed and sealed this Lease Agreement as of the day and year first noted above.

LANDLORD:
CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

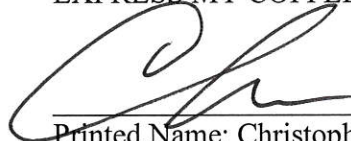


Marvin Foust
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary Westin, Director
Economic & International Development

TENANT:
EXPRESS MY COFFEE, LLC



Printed Name: Christopher Baird
Title: COO/CEO

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 19th day of November, 2015,
by Christopher Baird as owner of Express My Coffee, LLC (TENANT).

Stephanie Santiago

My Commission Expires:
April 9, 2016

Notary Public, State of Texas



EXHIBIT A

Floor Plan Depicting the Premises

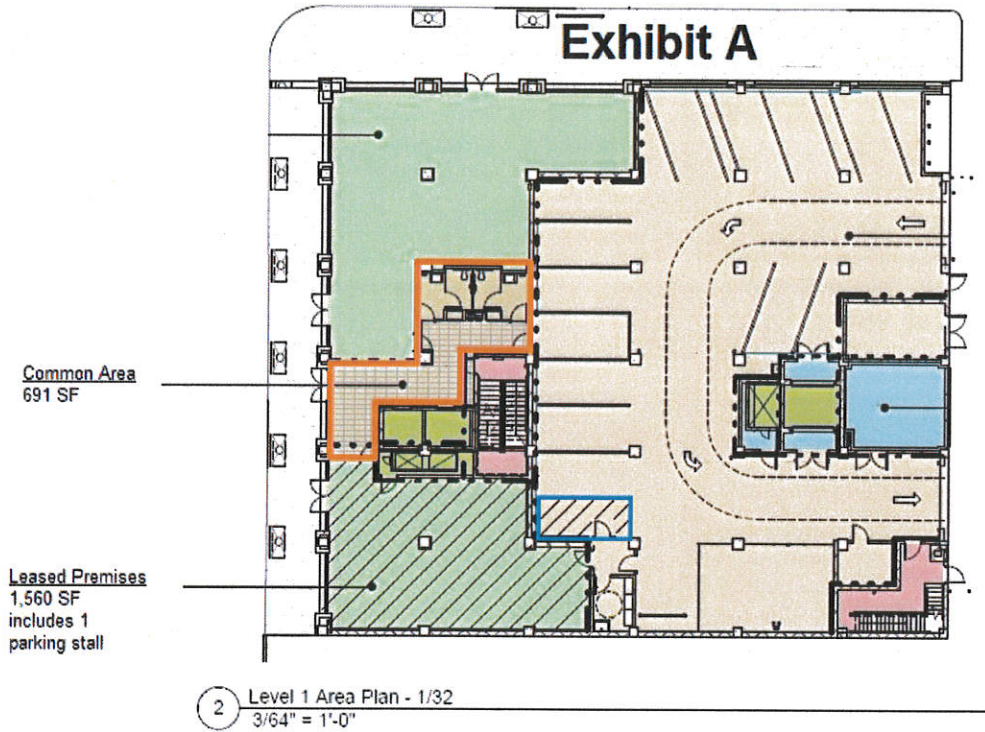
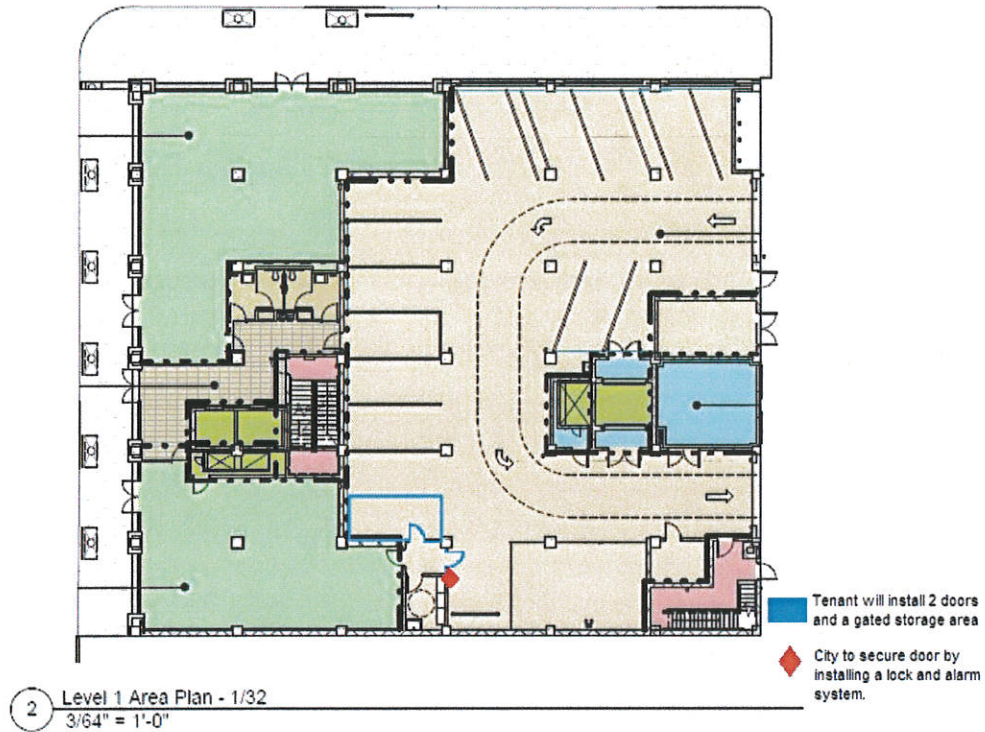


EXHIBIT B
Legal Description for the Property



Lots 11 - 14, Block 230, CAMPBELL ADDITION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 2, Page 68, Real Property Records, El Paso County, Texas.